

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 1609 of 2013

Date of order : 7.9.2015

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

NILMONI CHATTERJEE

VS

UNION OF INDIA & ORS. (S.E.RLY.)

For the applicant : None

For the respondents: Mr.A.K.Dutta, counsel

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved. Since none appeared for applicant on two successive occasions, Rule 15(1) of CAT (Procedure) Rules is invoked.

2. This application has been filed seeking the following reliefs :

- a) to set aside his speaking order dated 2.5.13 passed by the Chief Medical Superintendent, Adra, S.E. Railway. As because said order is repetition of earlier order dated 9.9.09 which was quashed by the Hon'ble Tribunal in OA 1730 of 2010;
- b) to pass an order directing the respondents particularly the respondent No. 2 & 4 to reimburse the sum of Rs.62,770/- and Rs.36,696/- which was spent by the applicant for his treatment with immediate effect.

3. In an earlier round of litigation filed with OA 1730/10 seeking reimbursement of the same amount as claimed in the present application, this Tribunal had noted down the facts in the following words and passed the following order :

"Admittedly the applicant who was in Railway Service was having some medical problem and admitted in the Adra Hospital on 13.10.07 and after he was shifted to Central Hospital, S.E. Railway on 15.10.07 and after due investigation when the doctor could not diagnose his disease he was referred to All India Institute of Medical Sciences, New Delhi but the applicant instead of reporting to the AIIMS he himself chosen for medical treatment from CMC, Vellore and got himself admitted in the said hospital on 27.1.08 and subsequently he was discharged from Vellore. After the discharge from the hospital the applicant submitted his entire medical claim in prescribed medical form on 20.6.08 wherein he has mentioned that he spent Rs.62770/- and also enclosed Cash memo and other documents. The sole ground of rejection other claim of the applicant that since he was referred to AIIMS, New

Delhi but he went to the CMC, Vellore of his own choice as such the claim was rejected. However, it was admitted that it is a chronic rare disease therefore, he was referred to AIIMS. The Railway Board's letter dated 31.1.07 provides for proper medical treatment and the Indian Railway Health Care Delivery system has 121 number of Railway Hospital and 586 No. of Railway Health Units established all over India., There is a specific provision and guidelines in regard to system to be followed that the medial done from unrecognised private hospital in this proposal from CMD has to be sent to DG/RHS and the approval is required from competent authority. In the instant case the respondents claim that since there was no reference to CMC, Vellore as such the claim could not be sanctioned. But the contention of the patient/Railway employee though it proper to take him to Vellore for treatment and from where he was discharged after a period of about six months and has submitted medical claim Rs.62770/-. The rejection of the claim of the applicant, appears to be unjustified as the contention of the Railway employee were not looked into by the respondents.

Accordingly we are of the view that ht decision so taken by the respondents in regard to rejection of the claim of the applicant through letter dated 9.9.09 (Annexure A/2) appears to be unjustified as such liable to be quashed. The respondents are directed to reconsider the medical claim of the applicant looking to the disease as observed by them and pass a final order within a period of three months and the decision so taken be communicated to the applicant."

4. The order impugned in the present OA is a speaking order issued pursuant to the said order passed in the OA. The speaking order manifests the reason for rejecting the claim as reflected hereunder :

"It is a chronic rare disease for which he was referred to AIIMS/New Delhi. But he went to CMC/ Vellore of his own choice. So, rejected."

It is noted that on 20.11.09 the Sr., Divisional Electrical Engineer (TRD)/

Adra requested the CMS to review the case since the case was a genuine one so far medical papers are concerned.

5. From the facts stated in the speaking order it appears that the Railway Hospital could not provide treatment for the disease the applicant was suffering from. He was referred to AIMS, New Delhi for further treatment. However, instead of availing the treatment at AIMS, New Delhi the applicant underwent treatment at CMC, Vellore. He was diagnosed as having "WEGENERS GRANULOMATOSIS WITH UVEITIES, RIGHT UPPER LOBE LUNG CAVITY AND RAPIDLY PRORESSING GLOMERULONEPHRITIS".

6. It is not a case where the applicant has not presented himself for treatment before the Railway Hospital. Rather it was on their advice he was constrained to approach a private hospital for his further treatment. As such although the respondents have harped on the fact that the applicant ought to

have reported to respective Authorised Medical Attendant in terms of instruction as envisaged in para 6 of the instructions dated 16.4.07 on medical treatment to Railway beneficiaries, no violation of the said instruction is noticed. It is also noted that para 6.2 of the said instruction allows treatment from recognised private hospitals as also from un-recognised private hospital in exceptional cases with a note -

"Adequate number of proper quality Private Hospital should be recognized to facilitate Railway Doctors to provide proper treatment to Railway patients if in house facilities are not adequate."

7. Further in terms of the instructions dated 31.1.07 as contained in Annexure R/2 to the reply medical expenses can be reimbursed in case of treatment taken in -

- a) Govt. hospital to the extent of full admissible amount;
- b) For an ailment which is recognised, in private hospital at the rate approved by the Railways;
- c) ^{Sh. B.} Recognised private hospital for an ailment which is not recognised or treatment taken in a non-recognised private hospital reimbursable at the CGHS rate of that city or nearest city can be allowed.

8. It would be profitable to quote the following judgments of Hon'ble Apex Court and various High Courts of our country while deliberating on the issue of reimbursement, of actual amount or on a package deal, if taken from a Private Hospital (extracted infra with supplied emphasis for clarity) -

In the case of ***State of Punjab & Ors. -vs- Ram Lubhaya Bagga*** **[(1998) 4 SCC 117]** the Hon'ble Apex Court has held that the State can neither urge nor say that it has no obligation to provide medical facility. If that were so, it would be ex facie violative of Article 21 of the Constitution. While adverting to fixing any rate vis-a-vis an ailment the Hon'ble Supreme Court has observed as under :

"No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and

scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India."

The Hon'ble Apex Court in the case of **State of Rajasthan -vs- Mahesh Kumar Sharma [(2011) 4 SCC 257]** while dealing with the subject matter held that reimbursement of medical expenses cannot be allowed to a Govt. Employee/pensioners de hors the rules or the scheme. IN this verdict, the Hon'ble Apex Court has held in para 8 as infra :

"In this connection it will be profitable to refer to the judgment of a Bench of three Judges of this Court in State of Punjab & Ors. -vs- Ram Lubhaya Bagga & Ors. reported in (1998) 4 SCC 117 where the Bench has laid down that the Government would be justified in limiting the medical facilities to the extent it is permitted by its financial resources. In the instant case, the Government has formulated necessary rules permitting the reimbursement of medical expenses in certain situations and upto a certain limit. The Government has been reimbursing the necessary expenditure as permitted by the rules uniformly. It will, therefore, not be proper for a Government employee or for his relatives to claim reimbursement of medical expenses otherwise that what was provided in the Rules."

In **Daljit Singh -vs- Govt. of NCT of Delhi & Ors. [WP(C) No. 16651/06]** Hon'ble High Court at New Delhi while deliberating on this issue held as under :

"This issue of whether reimbursement should be of actual amount or only the package deal amount has been the subject matter of various decisions of this Court. One such judgment is the judgment of a learned Single Judge of this Court in Milap Singh vs. Union of India, 2004(113) DLT 91 wherein three earlier judgments of this Court as also the judgment of the Supreme Court in the case of State of Punjab & Ors. vs. Mohan Lal Jindal, 2001 (9) SCC 217 were referred. Paras 9 to 14 of the said judgment read as under:-

"9. The judgment in V.K. Gupta v. Union of India & Anr., 97(2002)DLT337 is also of a patient treated in the said Hospital. Once again this Office Memorandum dated 18.09.1996 was considered and it was noticed that the rates given in the said Memorandum were to be followed for a period of two years. The Court found that the respondents have to be more responsive and cannot act in a mechanical manner to deprive the employees of their legitimate reimbursement, especially on account of their own failure in not revising the rates after expiry of the initial period. The petitioner was held entitled therein for reimbursement of the full amount.

10. In M.G. Mahindru v. Union of India & Anr. (2001) DLT 59, it has been held that full reimbursement of medical expenses to a speciality hospital, which is on an approved list of CGHS, cannot be denied to a retired Government servant.

11. It has to be appreciated that in cases of emergency like that in the present case, ex post facto sanction can always be granted for

specialised treatment. In fact, there is no real dispute in this behalf and the only issue is to the extent of the reimbursement made by the CGHS.

12. In State of Punjab & Ors. v. Mohan Lal Jindal (2001)9SCC217, the stand of the Government in refusing to reimburse the in-patient charges for the treatment in the said Hospital was rejected and the Government was held to be under a constitutional obligation to reimburse the expenses since the right to health is an integral to the right to life.

13. The attention of this Court is also drawn to the judgment in CWP No. 6658/2002 titled as 'V.K. Abbi v. Director General of Health Services & Anr.' decided on 04.04.2003 on the same issue. It may be noticed that this judgment has been affirmed in appeal by the Division Bench in LPA No. 480/2003 decided on 19.09.2003.

14. The undisputed position that emerges is that a patient is entitled to reimbursement of the full amount of medical expenses and not only at the rates specified in the circular of 1996 and in case respondent No. 2 has charged a higher rate, than could have been charged, it is for respondent No. 1 to settle the matter with respondent No. 2. The petitioner cannot be deprived of the reimbursement. The observations in para 26 of Prithvi Nath Chopra's case (supra) are useful in this behalf, which are as under:-

"26. It can also not be disputed that the Indraprastha Apollo Hospital has been made available land at token amount and it was for the respondents to have settled the amounts of reimbursement at the hospital. If the respondents have any grievance about the quantification of the amounts charged, it is for the respondents to take up the matter in issue with the Apollo Hospital. But that cannot deprive the petitioner of full reimbursement of the amount as charged by the recognised Indraprastha Apollo Hospital. In fact, the petitioner has been compelled to pay the charges first and thereafter reimbursement is taking place while the present policy is stated to be one where the respondents are directly billed by the approved hospitals which policy is salutary since the patient may not at a time have the funds available to first pay the amount and then claim the reimbursement." (underlining added).

4. In view of the above it is no longer res integra that merely because the Government does not revise the package deal amount under the Medical Attendance Rules from time to time a person cannot be denied actual medical costs, and there has to be reimbursement of the actual medical expenses incurred.

5. In view of the above, the writ petition is allowed. The respondent No.1 is directed to give medical reimbursement to the petitioner for a sum of Rs.1,41,399/- alongwith interest at 8% per annum simple from the date of filing of the petition till the date of payment. The amount be paid within six weeks. Writ petition is allowed and disposed of accordingly."

In a similar matter while upholding the decision of Central Administrative Tribunal, Circuit Bench at Ranchi passed in OA 193/06 the Hon'ble High Court of Jharkhand at Ranchi, in WP(S) 5186/09 considered the following decisions :

- i) Division Bench of the Rajasthan High Court in the case of **Bodu Ram Jat -vs- State of Rajasthan & Ors. [2006 (5) SLR 705]** held that such benefit is given for routine medical treatment and it has nothing to do with serious ailment and technicalities should not have been applied by the respondents.
- ii) Judgment of the Hon'ble Supreme Court delivered in the case of **Consumer Education & Research Centre & Ors. -vs- UOI & Ors. [AIR 1995 SC 922]**.
- iii) Delhi High Court judgment delivered in the case of **S.K.Sharma -vs- UOI & Anr. [2002 (64) DRJ 620]**.
- iv) Division Bench judgment of Delhi High Court delivered in the case of **Government of NCT of Delhi & Ors. -vs- Som Dutt Sharma [118 (2005) Delhi Law Times 144]**.
- v) Judgement of the Delhi High Court delivered in the case of **V.K.Jadhari -vs- UOI & Ors. [125(2005) Delhi Law Times 636]**.
- vi) Division Bench judgment of the Punjab & Haryana High Court delivered in the case of **Gurnam Singh Mann -vs- Punjab Agricultural University, Ludhiana & Ors. [2006 (2) SLR 561]**.
- vii) One detailed judgment of the Delhi High Court delivered in **WP(C) No. 889 of 2007 in the case of Kishan Chand -vs- Govt. of NCT & Ors. Decided on 12.3.2010 (unreported)** where the Delhi High Court considered various earlier judgments and thereafter held as under –

“It is quite shocking that despite various pronouncements of this Court and of the Apex Court the respondents in utter defiance of the law laid down have taken a position that the petitioner is not entitled to the grant of medical reimbursement since he did not opt to become a member of the said health scheme after his retirement or before the surgery undergone by him. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights on the pretext that he has not opted to become a member of the scheme or had paid the requisite subscription after having undergone the operation or any other medical treatment. Under Article 21 of the Constitution of India, the State has a constitutional obligation to bear the

medical expenses of Government employees while in service and also after they are retired.

The Hon'ble Court found -

"In this case, the respondent admittedly is a retired Government employee and he has undergone bypass surgery in a situation where he could not have obtained prior approval from the Government and it is worthwhile to mention here that petitioner's case has already been recommended by the petitioner's department for reimbursement of the bill"

and ordered as follows -

"In view of the above reasons given in the above judgments, we are of the considered opinion that there is no merit in this writ petition as there is no illegality in the order passed by the Tribunal. Therefore, the writ petition of the petitioners is dismissed."

I seek to be guided by the aforesaid decisions and pronouncements.

9. In view of the admitted factual position and in view of the indisputable fact that the applicant had not approached a private hospital on his own but had actually failed to get his treatment from a Railway hospital and was permitted by the respondents to get treated from a specialised private hospital, I am strongly of the opinion that the applicant will be entitled to reimbursement at least as per the Railway Rules quoted above. The decision of the authorities not to pay a single farthing towards his treatment despite the rules being there in favour of the employees to get treatment from private hospital, is arbitrary and liable to be set aside. As such the speaking order is quashed. The matter is remanded back to the appropriate authority to consider the reimbursement in accordance with law and release the same within three months from the date of communication of this order.

10. Accordingly the OA is disposed of. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)

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